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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,191	04/09/2004	Rodney Malcolm Druitt	50179-115	8212

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MCDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/821,191

Applicant(s)

DRUITT ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8-23-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on August 23, 2004. These drawings are not approved since they do not contain the phrase "Replacement Sheet" in the upper margin and do not accurately depict the plastic material.
2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the plastic material as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. Plastic is depicted in MPEP § 608.02(d) as alternating thick and thin lines. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

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***Claim Rejections - 35 USC § 112***

4. Claims 1-15,17, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

It is unclear how the first sealing portion is "at least adjacent" the top portion as set forth in claim 1.

Claims 5 and 6 each recites the limitation "the frangible bridges" in line 2. There is insufficient antecedent basis for this limitation in the claim since there could be only one bridge.

Claim 9 recites the limitation "the free end" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "each of said bridges" in line 1. There is insufficient antecedent basis for this limitation in the claim since there could be only one bridge.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 18,19,23, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Agbay, Sr. (US 4,919,286). See figs. 1 and 2.

Disclosed is a closure suitable for attachment to a container 51 having an end portion defining an opening of the container; said end portion having a retaining flange extending

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outwardly from the end portion and spaced a distance from the free end thereof, the closure comprising: a top portion 40; a skirt portion 21 depending from the top portion to an end distal the top portion, said top portion and skirt portion defining a cavity; and a support ring which is connected to said skirt portion by a frangible connection; wherein said support ring comprises a generally cylindrical body portion having a rib 23 extending inwardly of the body portion that provides a lip having an inner free edge to engage under the retaining flange 13, and an undercut providing an abutment surface that is formed in the inner surface of the body portion above the rib and which is engageable with an upper surface of the retaining flange on relatively downward movement of the support ring to the end portion.

Regarding claim 19, the frangible line represents the "one or more frangible bridges".

7. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (US 4,828,127).

Disclosed is a closure suitable for attachment to a container having an end portion defining an opening of the container, the closure comprising:

- a top portion 1;
- a skirt portion 2 depending from the top portion to an end distal the top portion, said top portion and skirt portion defining a cavity; and
- a support ring 3 which is connected to said skirt portion by one or more frangible bridges 12 that extend between the skirt portion and the support ring;

wherein at least one of said one or more bridges has a first end joined to the skirt portion in a respective recess 8 formed in the distal end of the skirt portion.

8. Claims 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Berglund (US 4,505,401).

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Disclosed is a closure suitable for attachment to a container having an end portion defining an opening of the container, the closure comprising:

- a top portion 1;
- a skirt portion 3 depending from the top portion to an end distal the top portion, said top portion and skirt portion defining a cavity; and
- a support ring 6 which is connected to said skirt portion by one or more frangible bridges 7 that extend between the skirt portion and the support ring;

wherein at least one of said one or more bridges has a first end joined to the skirt portion in a respective recess 8 formed in the distal end of the skirt portion.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1,2,4,9,13-15, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agbay in view of Tansey (US 5,782,369).

Agbay discloses a closure suitable for attachment to a container having an end portion defining an opening of the container, the closure comprising: a top portion 40; a skirt portion 21 depending from the top portion to an end distal the top portion, said top portion and skirt portion defining a cavity; a support ring 23 which is hingedly connected to said skirt portion; and a first sealing portion which is at least adjacent the top portion and having a cylindrical inner surface; and a second sealing portion separated from the top portion by the inner surface of the first portion and which, prior to attachment of the closure to the container, extends at least inwardly into said cavity for a length to a free edge positioned inwardly of the skirt portion. Agbay does

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not disclose the length of the second portion is such that, during attachment of the closure with the end portion of the container, the end portion of the container contacts the second portion and pushes it upwardly and at least towards the first sealing portion of the closure to form a seal between the end portion of the container and the closure. The single hinge of claim 2 is disclosed at column 7, lines 12-14.

Tansey teaches it is known to provide a closure with a first sealing and a second sealing portion wherein the length of the second portion is such that, during attachment of the closure with the end portion of the container, the end portion of the container contacts the second portion and pushes it upwardly and at least towards the first sealing portion of the closure to form a seal between the end portion of the container and the closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of the length of the second sealing portion being such that, during attachment of the closure with the end portion of the container, the end portion of the container contacts the second portion and pushes it upwardly and at least towards the first sealing portion of the closure to form a seal between the end portion of the container and the closure. Doing so provides a more effective seal between the closure and the container end portion.

11. Claims 1,2,4,5,6,9,10,13-15, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sondal (US 4,860,907) in view of Tansey.

Sondal discloses a closure suitable for attachment to a container having an end portion defining an opening of the container, the closure comprising: a top portion 1; a skirt portion 3 depending from the top portion to an end distal the top portion, said top portion and skirt portion defining a cavity; a support ring 2 which is hingedly connected to said skirt portion; and a first sealing portion which is at least adjacent the top portion and having a cylindrical inner surface; and a second sealing portion separated from the top portion by the inner surface of the first

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portion and which, prior to attachment of the closure to the container, extends at least inwardly into said cavity for a length to a free edge positioned inwardly of the skirt portion. Sondal does not disclose the length of the second portion is such that, during attachment of the closure with the end portion of the container, the end portion of the container contacts the second portion and pushes it upwardly and at least towards the first sealing portion of the closure to form a seal between the end portion of the container and the closure. The single hinge 10 of claim 2 is disclosed at column 2, line 51.

Tansey teaches it is known to provide a closure with a first sealing and a second sealing portion wherein the length of the second portion is such that, during attachment of the closure with the end portion of the container, the end portion of the container contacts the second portion and pushes it upwardly and at least towards the first sealing portion of the closure to form a seal between the end portion of the container and the closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of the length of the second sealing portion being such that, during attachment of the closure with the end portion of the container, the end portion of the container contacts the second portion and pushes it upwardly and at least towards the first sealing portion of the closure to form a seal between the end portion of the container and the closure. Doing so provides a more effective seal between the closure and the container end portion by overcoming imperfections in the container end portion.

Regarding claim 6, Sondal as modified teaches the claimed closure except for the frangible bridges being non-equally, circumferentially spaced. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frangible bridges non-equally spaced circumferentially about the closure, since it has been held that rearranging parts of an invention involves only routine skill in the art. Doing so allows for



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providing more bridges in the area most opposite the hinge to require more deliberate force for first opening of the closure.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kohl (US 5,499,736).

Sondal as amended teaches the claimed closure except for the line of weakness in the hinge.

Kohl teaches it is known to provide a line of weakness in the hinge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a line of weakness in the hinge of Sondal. Doing so allows for the hinge to keep the closure top portion and skirt opened and away from the container end portion for easier dispensing.

13. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 above, and further in view of Persch (US 4,638,917).

Sondal as amended teaches the claimed closure except for the bridges decreasing in circumferential width towards the skirt portion end of the bridge.

Persch teaches it is known to provide a closure with bridges decreasing in circumferential width towards the skirt portion end of the bridge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of decreasing the bridges in circumferential width towards the skirt portion end of the bridge to the modified closure of Sondal. Doing so allows for easier breakage of the bridges at the connection between the bridges and the skirt.

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14. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Mattia et al. (US 5,033,632)

Sondal as amended teaches the claimed closure except for the bridges decreasing in circumferential width towards the skirt portion end of the bridges and the bridges being connected to the skirt in a recessed area of the skirt end.

Mattia teaches it is known to provide a closure with bridges decreasing in circumferential width towards the skirt portion end of the bridges and the bridges being connected to the skirt in a recessed area of the skirt end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply to the closure of Sondal the teaching of the bridges decreasing in circumferential width towards the skirt portion end of the bridges and the recesses in the skirt for attaching the bridges to the skirt. Doing so provides protection from inadvertent breaking of the bridges during application of the closure to a container end portion.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 above, and further in view of Dutt et al. (US 4,856,665).

Sondal as modified teaches the claimed closure except for one or more projections extending outwardly from an outer surface of the support ring, said projections being located adjacent the upper edge of the support ring and serving to stiffen the ring adjacent its connection to the bridges.

Dutt teaches it is known to provide a closure having a support ring with one or more projections extending outwardly from an outer surface of the support ring, said projections being located adjacent the upper edge of the support ring and serving to stiffen the ring adjacent its connection to the bridges.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply to the closure of Sondal the teaching of one or more projections extending outwardly from an outer surface of the support ring, said projections being located adjacent the upper edge of the support ring and serving to stiffen the ring adjacent its connection to the bridges. Doing so reinforces the support ring during application of the closure to a container and additionally provides gripping structure to the support ring.

***Allowable Subject Matter***

16. Claim 20 is objected to as being dependent upon a rejected base claim, but appears to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claim 11 appears to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

18. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

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19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

20. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

21. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

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at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
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- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
January 31, 2007

A handwritten signature in black ink, appearing to read 'Robin A. Nylton', with a large, stylized flourish extending to the right.

Robin A. Nylton  
Primary Examiner  
GAU 3781